

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8329 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANOPSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner
Mr. K.T.Dave, ASSTT. GOVERNMENT PLEADER for
the respondent nos. 1,2 and 3.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 21/11/97

ORAL JUDGEMENT

Anopsinh Jadeja, member of Morbi

Nagarpalika has filed the present petition to challenge the order passed by the State of Gujarat on 15.11.1997 by which he has been removed as councillor of Morbi Nagarpalika.

2. The petitioner was elected as member of Morbi Nagarpalika in the election held in December, 1994. He was elected as President of the said Nagarpalika for the year 1996 on 13.6.96. The Public Works Committee of the said Nagarpalika passed a resolution recommending Shakti plot no. 3 to be sold in favour of one Jayrajbhai B Sampath. The said resolution was approved and the resolution for the said sale in favour of said Jayrajbhai Sampath was passed by the General Board on 31.10.96. As regards the said resolution, one Mr. Parikh had made a complaint to the Collector contending therein that the said land property does not belong to the Nagarpalika and that it was of the ownership of the State of Gujarat and it was in occupation of the police department, but inspite of the same an illegal resolution was passed by the Nagarpalika. When the said complaint was received by the Collector, he proceeded to hold an inquiry under Section 258 of the Gujarat Municipalities Act and in pursuance of the said inquiry, notices were issued to the present petitioner, Ex-president of the Municipality as well as to the President of the year 1997. During the said inquiry, the present petitioner had filed one affidavit on 20.4.97. When that affidavit was received by the Collector, the Collector found that the said affidavit was containing false and incorrect statements. He was of the opinion that conduct of the present petitioner in filing the said affidavit containing false statements was disgraceful. He therefore, submitted a report for taking action against the present petitioner under section 37 of the Gujarat Municipalities Act, 1963 in order to remove him as councillor of the said Morbi Nagarpalika. Thereafter, the State Government issued a notice under section 37 of the Act to the present petitioner to show cause as to why he should not be removed from the office for his disgraceful conduct. Pursuant to the said show cause notice, the petitioner gave his reply. After considering his reply, the State Government came to the conclusion that the affidavit filed by him was containing false statements of facts and therefore, the State Government decided to remove him by exercising powers under Section 37 of the Act and accordingly, order of removing him under section 37 as councillor of Morbi Nagarpalika is passed on 15.11.1997 and hence, the petitioner has come before this Court.

3. Mr. Yagnik, learned advocate for the petitioner has urged before me that the petitioner was the President in the year 1996 and the resolution of giving the land was passed by the Nagarpalika in the year 1996 and regarding the said resolution, the complaint was made by one Parekh and the Collector was holding the inquiry regarding the said resolution under Section 258 of the Gujarat Municipalities Act. Therefore, when the petitioner had filed an affidavit in question pertaining to the said inquiry regarding incident of the year 1996, the petitioner could not be removed as a councillor of the Municipality and at the most, he could be removed as President of the Municipality. In support of the said contention, he has placed reliance on the decision of this Court in the case of Chimanlal R Patel vs. Anand Municipality and others reported in 1983(1) GLR, 67.

4. Though the contention of Mr. Yagnik that the Collector was holding the inquiry under section 258 of the Act as regards the resolution which was passed when the petitioner was working as the President is correct and proper, I am unable to accept his submission that the action against the present petitioner could not be taken under section 37 of the Act for removing him as councillor of the said Nagarpalika because the action which has been taken against the present petitioner is regarding his conduct. The conduct of the present petitioner which is considered and for which action under section 37 of the Act is taken against him, is regarding filing of the affidavit in the month of April, 1997, to be exact on 20.4.97 and admittedly, on that date, the petitioner was not the President and he was the councillor of the Nagarpalika. The affidavit which the petitioner has filed has filed in his capacity as a municipal councillor as regards his conduct in the year 1996, when he was working as President. Therefore, the affidavit in question was filed by the present petitioner was filed in his capacity as a councillor and when the said affidavit was containing false statements, misconduct or misbehaviour committed by him was in his capacity as a municipal councillor. The conduct alleged against him is of filing a false affidavit by a municipal councillor and when municipal councillor files a false affidavit regarding his conduct as a municipal councillor, then that conduct would definitely be a disgraceful conduct of the municipal councillor for taking action against him under section 37 of the Act.

5. In my opinion, the decision cited by the learned advocate in the case of Chimanlal R Patel vs. Anand Municipality and others (supra) is not applicable

to the facts of the case before me. I am unable to hold that the action taken against the present petitioner is capricious, illegal or unreasonable so as to interfere with the same by exercising jurisdiction under Article 226 of the Constitution. I therefore, hold that this petition deserves to be summarily rejected and I accordingly reject the same with no order as to costs.

(S.D.Pandit,J)
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